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July 24, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Connect America Fund*, WC Docket No. 10-90
Written Ex Parte Presentation

Dear Ms. Dortch:

By this letter, the Wireless Internet Service Providers Association (“WISPA”) strongly supports the Petition for Reconsideration filed jointly by the American Cable Association and the National Cable & Telecommunications Association (the “Associations”) concerning the Wireline Competition Bureau’s adoption of a new evidentiary standard for the Connect America Fund (“CAF”) Phase II challenge process.¹

In the initial Report and Order adopted by the full Commission in 2011, the Commission correctly decided to “exclude [from CAF funding] areas where an unsubsidized competitor *offers* broadband service” that meets certain benchmarks.”² In the CAF Phase I challenge process, the Bureau interpreted “offer” to mean that “[t]he Commission did not specifically require . . . that a provider actually have customers in a particular census block in order to preclude eligibility for funding.”³ As the Association point out, the Bureau further stated that “[a] provider could *offer* broadband access to consumers in a census block, *but none of the consumers choose to subscribe to the broadband service*. Such a census block would still qualify as having access to broadband even though the block contains no broadband customers.”⁴ In adopting procedures for the CAF Phase II challenge process following a public comment period, the Bureau did not attempt to explain or to modify the definition of the term “offer.”⁵

¹ Petition for Reconsideration of the American Cable Association and the National Cable & Telecommunications Association, WC Docket No. 10-90 (filed July 22, 2014) (“Petition”).

² *Connect America Fund*, 26 FCC Rcd 17663, 17729 (2011) (“CAF Order”) (emphasis added).

³ *Connect America Fund*, 29 FCC Rcd 181, 186-87 (WCB 2014).

⁴ *Id.* (emphases added).

⁵ See *Connect America Fund*, 28 FCC Rcd 7211 (WCB 2013) (“Phase II Challenge Process Order”).



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However, as the Associations point out, in its recently released guidelines for CAF Phase II challenges, the Bureau materially changed this standard such that it contradicts the full Commission's decision and the Bureau's own decisions. Instead of "offering" service without regard to whether there are actual customers, the Bureau adopted a new three-part definition that, among other things, requires the provider to "actually be offering voice and broadband service in the census block" such that the provider must "*already have customers in that census block, or previously had customers in that census block.*"⁶ The Associations further observe that the Bureau did not justify its decision to depart from Commission directive and from its previous application of that directive in CAF Phase I, noting the Bureau's admission that it "had no prior experience in administering a challenge process."⁷

The Bureau even acknowledged its departure from the previous standard in explaining that the "absence of firm guidance [in Phase I], combined with the fact that Phase I support would provide one-time rather than ongoing funding, led the Bureau to interpret much of the evidence and statements received in a manner favorable to the putative existing providers."⁸ Now, however, the Bureau wants to turn the tables on unsubsidized competitors apparently because the stakes are higher. And a denial of funding in Phase I does not prohibit a price cap carrier, armed with a more favorable evidentiary standard, from taking another bite at the apple under the more expansive broadband and voice criteria applicable to Phase II.

The Bureau's insertion of this new standard is patently unfair. Unsubsidized competitors reasonably relied in good faith on the Commission's use of the term "offer" as the Bureau applied it in CAF Phase I and in the absence of any contrary interpretation in the *Phase II Challenge Process Order*. These existing providers believed that price cap carriers would be ineligible for CAF Phase II funding if they "offered" service as interpreted under a consistent line of decisions, even if they had no customers in a census block. But just 10 days before the CAF Phase II challenge process commences and 34 days before the challenge filing deadline, the Bureau inexplicably changed the ground rules to the tremendous disadvantage of unsubsidized competitors.

The adverse impact the Bureau's decision will have on unsubsidized broadband providers cannot be overstated. Fixed wireless Internet service providers ("WISPs") may cover multiple census blocks from a single base station and "offer" service in those census blocks. Under the Commission's initial decision and the Bureau's application of that decision in CAF Phase I, those areas would be treated as "served." But under the new *Guidelines Notice* these areas would be "unserved" and thereby eligible for CAF Phase II funding, thereby introducing government-subsidized competition into an area where qualifying broadband and voice service are already offered. This result contravenes Commission policies and sends the wrong message

⁶ *Public Notice*, "Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process," DA 14-864 (rel. June 20, 2014) ("*Guidelines Notice*"), at 3, 4 (emphasis added).

⁷ *Guidance Notice* at 2.

⁸ *Id.* (citation omitted.).



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to unsubsidized competitors that have invested their own funds to deliver broadband and voice services to areas that price cap carriers have elected to not serve.

Based on the foregoing and for the reasons described in the Petition, WISPA strongly supports expeditious grant of the Petition.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceeding.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Stephen E. Coran', with a long horizontal flourish extending to the right.

Stephen E. Coran

cc: Carol Matthey
Ryan Yates